

September 1, 2023

Via ECF Only

Molly C. Dwyer, Clerk of Court
Office of the Clerk
U.S. Court of Appeals for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

Re: *Greenstein et al. v. Noblr Reciprocal Exchange*, No. 22-17023:
Response to Citation of Supplemental Authority

Dear Clerk of Court:

Defendant-Appellee Noblr Reciprocal Exchange responds to Plaintiffs-Appellants' letter dated August 28, 2023, notifying this Court of the decisions in *Bohnak v. Marsh & McLennan Companies, Inc.*, No. 22-319, 2023 WL 5437558 (2d Cir. Aug. 24, 2023), and *In re GEICO Customer Data Breach Litig.*, No. 1:21-cv-2210, 2023 WL 5524105 (E.D.N.Y. Aug. 28, 2023)

In *Bohnak*, the Second Circuit held that the plaintiff had alleged an injury-in-fact due to an alleged theft of social security numbers ("SSNs"), not a theft of driver's license numbers ("DLNs") as is alleged here. Specifically, the Second Circuit held that, "the allegations of a targeted hack that exposed [Plaintiff's] name and SSN ... are sufficient to suggest a substantial likelihood of future harm ... to constitute an injury in fact." *Bohnak*, 2023 WL 5437558 at *10. It reasoned that SSNs (not DLNs) are "exactly the kind of information that gives rise to a high risk of identity theft" and "are among the worst kind of personal information to have stolen because they may be put to a variety of fraudulent uses and are difficult ... to change." *Id.* (citations omitted).

The *GEICO* decision is an unpublished adoption of a report and recommendation from an out-of-circuit court. In the underlying report and recommendation, the magistrate judge expressly distinguished the allegations

in this case, where the plaintiffs did not allege “an actual past injury (e.g., actual misuse of the DLNs resulting in plaintiffs incurring discernable costs).” *In re GEICO Customer Data Breach Litig.*, No. 21-CV-2210, 2023 WL 4778646, at *11, n. 16 (E.D.N.Y. July 21, 2023) (report and recommendation).

Sincerely,

/s/ Jim Silliman

Jim Silliman

cc: Counsel of Record (by ECF)

CERTIFICATE OF COMPLIANCE

The foregoing complies with FED. R. APP. P. 28(j) and Ninth Circuit Rule 28-6 because the body of this letter does not exceed 350 words.

Date: September 1, 2023

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CERTIFICATE OF SERVICE

I, Jim Silliman, an attorney, hereby certify that I caused a copy of the foregoing Citation of Supplemental Authority under Fed. R. App. P. 28(j) to be served upon the parties who have noticed an appearance through the CM/ECF system.

Date: September 1, 2023

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